

Demond Anderson appeals his conviction for harassment as a class B misdemeanor.¹ Anderson raises one issue, which we restate as whether the evidence is sufficient to sustain his conviction. We affirm.

The relevant facts follow. During the night of January 3, 2006, Aleah Simmons received four voice mail messages on her cell phone. The first message was left at 2:50 a.m. and contained music. The second message was left at 2:56 a.m. and contained music and laughing at the end of the message. The third message was left at 3:37 a.m. and contained noises of sexual activity. The last message was left at 4:56 a.m. and contained more sexual activity and two voices. Simmons, who had previously dated Anderson, recognized one of the voices as that of Anderson.

The State charged Anderson with harassment as a class B misdemeanor. During the bench trial, Simmons and her sister testified regarding the content of the messages and testified that they heard Anderson's voice on the messages. The trial court found Anderson guilty and sentenced him to 180 days in jail.

The issue is whether the evidence is sufficient to sustain Anderson's conviction for harassment as a class B misdemeanor. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the

¹ Ind. Code § 35-45-2-2 (2004).

conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

The offense of harassment as a class B misdemeanor is governed by Ind. Code § 35-45-2-2(a), which provides: “A person who, with intent to harass, annoy, or alarm another person but with no intent of legitimate communication: (1) makes a telephone call, whether or not a conversation ensues; . . . commits harassment, a Class B misdemeanor.” Anderson argues that the evidence was insufficient to show the identity of the caller and an intent to harass, annoy, or alarm.

According to Anderson, Simmons and her sister’s testimony was insufficient to demonstrate the identity of the caller on the voicemail messages. Rather, the actual messages should have been admitted into evidence because of the “best evidence rule,” Ind. Evidence Rule 1002.² Anderson acknowledges that he did not object to the testimony of Simmons or her sister based upon the best evidence rule. Further, Anderson does not argue that fundamental error occurred. Therefore, Anderson has waived this issue. Waiver notwithstanding, we note that “[t]o be entitled to reversal for the improper use of secondary evidence, ‘[a]n effective objection must identify an actual dispute over the accuracy of the secondary evidence.’” Jones v. State, 780 N.E.2d 373, 378 (Ind. 2002) (quoting Lopez v. State, 527 N.E.2d 1119, 1125 (Ind. 1988)). Anderson does not

² Ind. Evidence Rule 1002 provides: “To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.”

dispute the content of the voicemail messages. Rather, he only disputes the identification of the voice Simmons and her sister heard on the voicemail messages. Even if the actual voicemail messages had been admitted at trial, the identification of Anderson's voice would still depend upon the testimony of Simmons and Simmons's sister.

A caller's identity must be established as a foundation for the admission of the content of a telephone call. Parrish v. State, 515 N.E.2d 516, 520 (Ind. 1987). Identity may be established through voice identification where the receiver is familiar with the caller's voice. Angleton v. State, 686 N.E.2d 803, 808 (Ind. 1997), reh'g denied. Identity may also be established through circumstantial evidence where the caller gives sufficient specific information which only she would know. Id. "The identity of the caller need not be proved beyond a reasonable doubt." Id. Conflicts in information establishing identity go to the weight and not the admissibility of the evidence. Id.

Simmons testified that she had dated Anderson, that she had previously talked to him on the telephone, that she recognized his voice, and that the voice on the messages belonged to Anderson. Simmons's sister also testified that she knew Anderson and recognized his voice on the messages. Any error in the admission of the contents of the voicemail messages through Simmons's testimony rather than the actual voicemail messages was harmless. See, e.g., Jones, 780 N.E.2d at 378 ("Because there is no dispute as to the accuracy of the description, any error in admitting the description in lieu of the actual movie was harmless.").

Anderson also argues that the evidence is insufficient to show an intent to harass, annoy, or alarm because Simmons was asleep at the time of the calls, had her telephone turned off, and did not receive the voicemails until the following day. However, the focus here is not necessarily upon the time of day that Simmons retrieved the messages. Rather, the focus is upon Anderson's intent in leaving the messages. Anderson, who used to date Simmons, left Simmons messages of himself and another woman engaging in sexual activity. The trial court could have reasonably inferred that Anderson's intent was to harass, annoy, or alarm Simmons. See, e.g., Burton v. State, 665 N.E.2d 924, 926 (Ind. Ct. App. 1996) (holding that the evidence was sufficient to demonstrate that the defendant had an intent to harass, annoy, or alarm the victim where he made numerous calls to the victim's residence, many of which were sexually explicit and included threats).

For the foregoing reasons, we affirm Anderson's conviction for harassment as a class B misdemeanor.

Affirmed.

KIRSCH, C. J. and MATHIAS, J. concur